U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 01 105 53215 Office: NEBRASKA SERVICE CENTER Date:

[redacted]

MAR 31 2004

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson
for Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has earned sustained national or international acclaim at the very top level.

This petition, filed on February 13, 2001, seeks to classify the petitioner as an alien with extraordinary ability as a research scientist in "the field of molecular biology and immunology, and blood transfusion medicine." At the time of filing, the petitioner was working as a research associate in the Virology Division of the Department of Medicine at the University of Washington.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets the following criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

On appeal, the petitioner states:

> I am the recipient of the "Annual Award for Outstanding Research Investigator" from Hunan Medical University in 1994, the "Award for Outstanding Paper" from the First Youth Scientific Meeting of Hunan Province in 1995, the "First Class Prize for Extraordinary Research Paper" from Hunan Medical University in 1995, and the "Second Prize of Achievements in Medical Science" from the Hunan Provincial Committee of Medical and Technological Achievements in 1998.

We note here that the petitioner studied and worked at Hunan Medical University from 1985 to 1996. The above awards reflect regional or institutional, rather than national or international, recognition. On appeal, the petitioner states that he agrees with the director's finding that these awards "fall short of a nationally or internationally recognized prize or award."

The petitioner submitted evidence showing that he was the recipient of two research grants from the National Natural Science Foundation in China during the mid-1990s. Also submitted was evidence showing that the petitioner was an "elected co-principal investigator" on a joint grant on human Rh blood groups funded by the National Institutes of Health. We note, however, that research grants simply fund a scientist's work. The past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future scientific research, and is not a national or international award to honor or recognize past achievement. Furthermore, we note that a substantial amount of scientific research is funded by research grants from a variety of sources. Therefore, we do not accept the assertion that the receipt of a research grant places a scientist at the very top of his field.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. In addition, it is clear from the regulatory language that members must be selected at the national or international, rather than the local, level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner provided evidence of his "postdoctoral" membership status in the American Association for the Advancement of Science (AAAS). According to its website at *www.aaas.org*, "[m]embership in AAAS is open to all individuals who support the goals and objectives of the Association and are willing to contribute to the achievement of those goals and objectives." The record contains no evidence showing that AAAS requires outstanding achievement as an essential condition for admission to membership.

Also submitted was a letter from Dr. Joseph Hoffman, Department of Cellular and Molecular Physiology, Yale University, thanking the petitioner "for agreeing to talk at the Fall [2000] meeting of the Red Cell Club." While the evidence presented by the petitioner shows that the petitioner participated in a one-time speaking engagement at the invitation of the Red Cell Club, the record contains no evidence of his individual

membership in the club. Nor does the record contain a copy of the bylaws for the Red Cell Club or further information regarding its criteria for admission to membership.

On appeal, the petitioner submits an April 2001 letter addressed to him from the New York Academy of Sciences (NYAS) entitled "Your Invitation to Academy Membership." Also provided was a membership certificate from NYAS declaring the petitioner "an active member." In light of the April 2001 invitation to membership, it is apparent that the petitioner did not hold membership in NYAS as of the filing date of the petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. Aside from the issue of the date that this evidence came into existence, it is further noted that, according to its website at *www.nyas.org*, NYAS membership "is open to all active professional scientists, physicians, engineers, students, and other individuals who share the Academy's interests."

In sum, we find that the documentation presented does not establish that any of the above organizations require outstanding achievements of their members, or that the petitioner was evaluated by recognized national or international experts in consideration of his membership.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. Dr. Cheng-Han Huang, Associate Member and Head of the Department of Biochemistry and Molecular Genetics, Lindsley F. Kimball Research Institute, New York Blood Center, supervised the petitioner's research fellowship at that institution during the late 1990s. In a letter provided in support of the petition, Dr. Huang claims that the petitioner's "discovery of new Rh proteins in human organs...represents a major breakthrough" that "has been timely commented and publicized in renowned scientific journals." A review of the evidence presented to support this assertion reveals that while the petitioner's work was referenced in a footnote at the conclusion of separate articles written by Dr. Gavin Thomas and Dr. Neil Avent, it was Dr. Huang and Dr. Anne-Marie Marini who were actually mentioned in the text of these articles. It is further noted that the articles written by Dr. Thomas and Dr. Neil each referenced a number of researchers. For these reasons, the citations presented do not constitute qualifying "published materials about the alien." The plain wording of this criterion requires the petitioner to demonstrate that he was the primary subject of the published material. Citations of the petitioner's work will be addressed under a separate criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

We withdraw the director's finding that the petitioner's evidence satisfies this criterion. The petitioner provided several witness letters in support of the petition. The majority of these letters, however, are from individuals from institutions where the petitioner has studied or worked. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim. If the petitioner's research contributions are not widely praised outside of his current and former

colleagues, then it cannot be concluded that he has earned sustained national or international acclaim as a top biomedical researcher.

Dr. Colvin Redman, Head, Laboratory of Membrane Biochemistry, Lindsley F. Kimball Research Institute, New York Blood Center, states:

> [The petitioner] has isolated and studied many genes homologous to Rhesus blood groups from simple organisms to mammals. His findings indicate that the Rh family of genes and proteins are deeply rooted in evolution, suggesting that Rh homologues possess important biological functions beyond their presence on red blood cells. His studies have contributed greatly to our understanding of the structure-function relationships of the Rh family of proteins and, at the very least, will have significant impact on the future care and management of infants suffering from hemolytic disease of newborns elicited by maternal antibodies to the Rh blood group.

Dr. David Koelle, Assistant Professor, Allergy and Infectious Diseases, Department of Medicine, University of Washington, states:

> In less than four years, [the petitioner] made several breakthrough contributions that have been internationally recognized in the field of blood transfusion medicine. He is a co-inventor on two patents entitled "Mammalian Rh type B glycoprotein ion transporter" and "Mammalian non erythroid Rh type C genes and glycoproteins." He co-authored eight publications in peer-reviewed journals, including very prestigious journals such as the *Journal of Biological Chemistry*.

It is apparent that any article, in order to be accepted for publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher whose work is accepted for publication has made a major contribution in his particular field. The record contains no evidence that the publication of one's work is unusual in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or often relied upon the petitioner's work in their research. We will further address the petitioner's published works under a separate criterion.

Dr. Huang states:

> [The petitioner] isolated human Rh homologous genes that are candidates for medullary cystic kidney disease and type 1 tyrosinemia disease. These discoveries are pending for the patent [sic] in the U.S. Patent Office. The knowledge gained from [the petitioner's] study will have a long-term impact on human biology and will benefit the American people...

In regard to the petitioner's patent applications, we note that anyone may file a patent application, regardless of whether the invention constitutes an important contribution. There is no evidence showing that the patent applications were approved by the U.S. Patent and Trademark Office (USPTO) as of the petition's filing date or that the innovations described in the patent applications are "internationally recognized in the field of blood transfusion medicine" as a major contribution. *See Matter of Katigbak, supra.* Even if the petitioner were to provide evidence of an approved patent as of the petition's filing date, it would carry little weight in this matter. Of far greater relevance in this proceeding is the importance to the greater field of the petitioner's patented innovations. The granting of a patent documents that an innovation is original, but not every patented invention constitutes a significant contribution to one's field. Here, the petitioner has provided no evidence

showing that, for example, his patented innovations were successfully marketed on a national or international scale or that they attracted widespread interest from medical manufacturers or pharmaceutical companies in China, the U.S., or any other country. According to statistics released by the USPTO, which are available on its website at *www.uspto.gov*, that office has approved over one hundred thousand patents per year since 1991. In 2001, for example, it received 345,732 applications and granted 183,975 patents. The petitioner has offered no substantive evidence showing that his own findings (rather than those attributable to his former research supervisor, Dr. Huang) are widely viewed as a major contribution among independent experts throughout the field of blood transfusion medicine.

In this case, the witnesses discuss what may, might, or could one day result from the petitioner's work, rather than how the his past efforts have already had a major impact in his field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak, supra.* While numerous witnesses discuss the potential applications of the petitioner's findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications would not elevate him to a level above almost all others in his field at the national or international level.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

We also withdraw the director's finding that the petitioner's evidence satisfies this criterion. Documentation contained in the record indicates that the petitioner has co-authored articles appearing in journals such as the *Journal of Biological Chemistry*, *Blood*, and the *Journal of Molecular Evolution*. The publication of scholarly articles, however, is not automatic evidence of sustained national or international acclaim; we must also consider the greater research community's reaction to those articles. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers would demonstrate more widespread interest in, and reliance on, the petitioner's work. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the greater research community, then it is reasonable to question how widely that alien's work is viewed as being nationally or internationally acclaimed.

The record contains citation indices showing 27 citations of the petitioner's published work. More than half of these citations are self-citations by the petitioner or Dr. Huang. Self-citation is a normal, expected practice among researchers in the scientific community. Self-citation cannot, however, demonstrate the response of

independent researchers. While the citation indices presented demonstrate some degree of interest in the petitioner's published work, he has not shown that an aggregate total of thirteen independent citations of six published articles elevates him to a level above almost all other researchers in the biomedical field. The petitioner has clearly authored published articles and abstracts over the past decade, but the weight of this evidence is diminished by the lack of substantial evidence showing that these articles have significantly influenced his field.

The fundamental nature of this highly restrictive visa classification demands comparison between the petitioner and others in his field. The regulatory criteria describe types of evidence that the petitioner may submit, but it does not follow that every scientific researcher who has published the results of his work or earned the respect of a handful of his colleagues, is among the small percentage at the very top of the field. While the burden of proof for this visa classification is not an easy one to satisfy, the classification itself is not meant to be easy to obtain; an alien who is not at the top of his or her field will be, by definition, unable to submit adequate evidence to establish such acclaim. This classification is for individuals at the rarefied heights of their respective fields; an alien can be successful, and even win praise from experts in the field, without reaching the top of that field.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

Review of the record does not establish that the petitioner has distinguished himself as a research scientist to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.